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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/020,924	12/19/2001	Francis Emmerson	367.40944X00	8863

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ANTONELLI, TERRY, STOUT & KRAUS, LLP
1300 NORTH SEVENTEENTH STREET
SUITE 1800
ARLINGTON, VA 22209-9889

EXAMINER

SAGER, MARK ALAN

ART UNIT	PAPER NUMBER
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3714

DATE MAILED: 09/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/020,924

Applicant(s)

EMMERSON ET AL.

Examiner

M. A. Sager

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 2/2/04, 7/19/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

Response to Arguments/Finality

1. Applicant's arguments, see Response, filed July 19, 2004, with respect to the rejection(s) of claim(s) under 102/103 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Ng.

Additionally, Applicant's request for reconsideration of the finality of the rejection of the last Office action is persuasive and, therefore, the finality of that action is withdrawn.

Claim Rejections - 35 USC § 102

2. Claim 7-11, 13-16 is rejected under 35 U.S.C. 102(b) as anticipated by Ng (5971855). For clarity of holding, training data is, from Applicants' disclosed definition, 'any algorithm or any other form of data that is designed to be applied to gaming parameters so as to change certain attributes of the gaming parameter' and 'comprises adaptations for gaming parameters'. As best understood, Ng discloses a apparatus and method teaching all claimed features/steps, as broadly claimed, including an electronic device as a client terminal, handheld electronic device, game console or PC (fig. 1), providing game content comprising gaming parameters for storage on and used by the electronic device (5:41-6:13, figs. 1-5), providing training data at a server for modifying the gaming parameters transmitted by signals through wired network (2:41-60, 3:56-4:3, 5:41-7:40, 8:50-9:66, Command: Type and Status1 & 2, figs. 1-6), applying the training data to one or more selected gaming parameters uploaded to the server from the device to provide a trained parameter set and altering play of the electronic game ... by applying to the electronic game the trained parameter set downloaded from the server (sic). Ng's

game connects a electronic game device to train or modify one or more selected character attributes at a server and to download or upgrade the preprogrammed game by modifying attributes of the game character that teaches claimed features/steps as broadly claimed.

The selection of character attributes includes selection of all attributes or at least one attribute selected based on train option.

3. Claim 1-3, 6, 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ng in view of either Applicants' background of admitted prior art or Sides (5048831). As best understood, Ng discloses a apparatus and method teaching claimed steps/features including transmitting or sending game parameters via phone lines (sic), but does not suggest using a mobile phone. Regarding mobile phone (clm 1) or wireless (clm 6, 12), the examiner notes equivalence of those claims to wired connectivity (clm 13). The difference between these steps/features and those clearly taught by Ng lie in the type of connection provided. As these features/steps are variations of providing connections as are known (currently only wired or wireless exists), such would have been obvious to one of ordinary skill in the art in implementation of Ng. Absent criticality, specific service and connection to the service fall within the realm of choice by game designers, when implementing a particular connection onto Ng's apparatus or method. The lack of criticality of the specific recitations in the claims is evidenced by Applicant's disclosure that further teaches these variations to be equivalent choices. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to add 'mobile' or 'wireless' as an equivalent connection to Ng's apparatus/method in order to increase accessibility, thereby, increasing profitability of the game due to increased/ease of access. Applicant's background disclosure of admitted prior art is submitted as

evidence of popularity of wireless gaming on mobile phone for its ease of accessibility or flexibility (mobility). Essentially, the lack of criticality of the claimed form of connection is noted. Ng's wired connection is an obvious variation of claimed method of connection. The form of connection as disclosed by Applicant is not critical over method of modifying game parameters as taught by Ng.

Alternatively, Ng discloses claimed invention (*supra*) except mobile phone or wireless. However, playing games via mobile phone for sending wireless signals to/from server was notoriously well known as evidenced by Applicants background admission of prior art (1:12-2:2) for playing or accessing games remote from server by sending wireless signals from a mobile phone. Alternatively, Sides discloses playing or accessing games via cellular (mobile) phones so as to be sending wireless signals to access/play games remote from server. The flexibility (mobility) or ease of accessibility offered by playing games by sending wireless signals from a mobile phone was popular prior to invention as evidenced either by Applicants admission or Sides. Therefore, it would have been obvious to one of ordinary skill in the art (an artisan) at a time prior to the invention to add mobile phone or wireless as disclosed by Applicants background of admitted prior art or Sides to Ng's apparatus or method to increase the flexibility or ease of accessibility to play games which increases game play and to increase profitability therefrom the increased game play. It is acknowledged that Ng's background discusses a method/apparatus professing preference for less complex and less costly electronic devices; however, Ng's method does not teach away from cited combination when an artisan considers the art taken as a whole at a time prior to the invention. In consideration of the popularity of increased flexibility and popularity of mobile phone use in

accessing/playing games, an artisan would consider it obvious to include wireless signals via a mobile phone as taught by Sides or admitted by Applicant's background admission of prior art with Ng's method/apparatus for modifying game parameters so as to increase accessibility/flexibility in game play which results in increased game play and profitability thereby.

4. Claim 4-5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ng or Ng in view of either Applicant's background admission of prior art or Sides as applied to claim 1 above, and further in view of Kondo (6606104). Ng or Ng in view of either Applicants background admission of prior art or Sides discloses claimed invention (supra) except a team. However, team play such as team sports like baseball or soccer or basketball in wired or wireless electronic game apparatus was notoriously well known. Kondo discloses selection of team play over a network for modifying parameters. Some player's enjoy/prefer team play over solo or solitary type game play. Therefore, it would have been obvious to an artisan at a time prior to the invention to add a team as taught by Kondo to Ng or Ng's apparatus/method in view of either Applicants background admission of prior art or Sides in order to provide increase enjoyment by offering a form of game play preferred by some players.

Conclusion

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. A. Sager whose telephone number is 703-308-0785.

The examiner can normally be reached on T-F, 0700-1700 hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Hughes can be reached on 703-308-1806. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



M. A. Sager
Primary Examiner
Art Unit 3714

MAS